

**BDAC ASSURANCES WORK GROUP**  
**Meeting Summary**  
July 7, 1998

The BDAC Assurances Work Group held its sixteenth meeting on July 7, 1998, from 1:30 p.m. until 4:30 p.m., in Room 1131 of the Resources Building.

**BDAC Members:**

Hap Dunning

**CALFED Staff/Consultants:**

Lester Snow  
Steve Ritchie  
Stein Buer  
Dave Fullerton  
Mike Heaton  
Eugenia Laychak  
Gwen Knittweis  
Marti Kie

**Others:**

Cary Wright	Julie Tupper	Dennis O'Connor	William Owens
Randall Newdell	George Bayse	Kendra Daijogo	Lori Clamurro
Doug Haaland	Bill Betchart	Tom Hagler	Fred Kindel
Pete Rhoads	Liz Howard	George Woodward	Ros Tobe

1. Work Group Chair Hap Dunning, convened the meeting at 1:30 p.m. Meeting participants introduced themselves.
2. The summary of the May 29 meeting was reviewed; there were no corrections.
3. Cliff Schulz reported that the Ag-Urban Group is working on two areas related to assurances: ecosystem management and governance; and phased implementation and triggers. The Ag-Urban Group has also had some discussion on what will need to be in the Programmatic EIR/EIS in order to make it legally sufficient and what this means for assurances. Cliff also reported that a major issue for Ag-Urban is how water users can get regulatory and water supply reliability (i.e., no surprises) at a comparable level no matter what triggers are

eventually pulled or not pulled, i.e., regardless whether facilities are constructed. Ag-Urban representatives have also been meeting with agency representatives regarding the development of the Conservation Strategy.

4. Cynthia Koehler reported the EWC has submitted joint comments on the draft PEIR/EIS.
5. Dave Fullerton reported that Mary Scoonover is on temporary assignment at the Tahoe Regional Planning Agency and that Sue Lurie has left CALFED to take a position in Bend Oregon. Dave will staff the Assurances Work Group at least on a temporary basis.
6. Lester Snow gave the Work Group an update on the current process, schedule and milestones. He also reported that Steve Ritchie has joined the CALFED Program as Assistant Director.

The concepts of staged implementation, linked actions and conditional decision-making are explained in the memo "Developing a Draft Preferred Alternative". The target date for a revised draft PEIR/EIS with an identified preferred alternative is December 1998. It will be essential that CALFED and stakeholders come to an agreement by August or September, so that a Phase 2 report can be prepared in October for inclusion in the revised draft.

Governor Wilson and Secretary Babbitt have committed to meet monthly until the end of the year in an effort to keep the process on track.

Lester suggested that the ERP governance and management issue, i.e., the question whether there should be a new entity to implement and manage the ERP, is a critical problem and that Assurances Work Group should focus on that issue.

7. Mike Fris reported on the development of the Conservation Strategy.

The Conservation Strategy (CS) is not a Habitat Conservation Plan (HCP) but will provide the framework for one or more HCP's for specific CALFED programs or actions. Generally, the CS will describe the programmatic level effects of the programs on identified species and will describe how the programs can or should be modified to protect species and achieve recovery and restoration goals. It will also describe how incidental take might occur under the appropriate HCP, Biological Opinion (BO) or incidental take permit. The CS will also define the circumstances under which conservation of a specific species, rather than recovery or restoration, might be appropriate.

The CS is essentially a data base which identifies the species covered, habitat conditions, existing conservation and/or recovery plans, and which describes how the CALFED Program actions will impact (positively or negatively) a specific species and/or its habitat. The strategy of the CS is to maximize benefits and minimize impacts to species and habitats, and to provide monitoring and mitigation programs.

In response to a question about the standard ("no jeopardy", conservation, recovery) of the CS, Mike said that there will be programmatic Section 7 consultation on the CALFED Program as a whole, which will establish the "no jeopardy" baseline. The CS will set higher goals and will be oriented more towards recovery. The team developing the CS will try to identify an appropriate goals for each covered species.

There was a discussion of how the higher standard will be enforced. The ESA provides only for a "no jeopardy" level of legal protection. What will be the mechanism to ensure a higher standard, such as recovery or restoration? The primary tools available are contractual arrangements, revenue streams and linkages to other program actions.

There was a discussion about the relationship between the CS and the concept of "no surprises" and regulatory certainty for water users. The CS will not itself include any guarantees of "no surprises"; it will provide the framework for BO's or incidental take permits.

This led to a discussion about whether water users can be provided with an assurance of "no surprises" if the ERP has sufficient funds and other resources to assume the risk of new ESA listings or regulatory constraints. Water users believe that if the ERP is provided with a sufficient level of reliable funding and has access to supplemental water supplies through market transactions, then the ERP should be able to assume these risks. Environmental representatives are concerned that money is not a sufficient tool and in any event that revenue streams may not be reliable over the long term.

Lester suggested that it would be more productive to focus on how the ERP could be managed and implemented in a way that achieves recovery goals and protects water supply reliability. He is looking for a way to balance or share the risk of new regulatory constraints that is protective of ecosystem goals and water supply.

#### 8. Discussion of ERP governance and management and the need for a new agency .

Dave Fullerton summarized the discussion paper included in the meeting packet on ERP management and governance. There appears to be general agreement among most stakeholders that a new entity is needed for implementation of the ERP, but there are a number of issues regarding funding, risk sharing and regulatory stability. One view is that a new entity which can operate as a resource manager in a market environment can manage the residual risk of new ESA or other regulatory constraints if it is sufficiently funded and has sufficient operational and administrative flexibility.

Cliff Schulz reviewed the draft Ag-Urban white paper on the new entity for ERP management. He stated that the role or level of participation of water users in the new entity should be a function of the risk to water supply and amount of money required from water users. If risk and/or financial requirements are high, water users should have control of the new entity. The lower the risk and/or cost to water users, the lower the level of control and/or participation required.

Cliff emphasized that the new entity would not have any regulatory authority and that it should be designed to minimize amount of interference with existing agencies jurisdictions. He also described the functions which the new entity should be able to perform.

There was a brief discussion of ERP funding. There are three general categories of funding available. Initial ERP funding will come from money already provided in federal appropriations, Proposition 204 funding, and presumably, new bond funding. Water user fees, a second source of funding, is presumably as insurance or the cost of "no surprises" protection. Additional public money in the form of federal or state appropriations could provide a third source of funding. The amount of funding provided by the second and third categories must be resolved by a negotiation over the level of shared risk, i.e., should public money be used to assume the residual risks associated with future ESA listings or regulatory constraints?

Another issue is the scope of the new management entity for ERP. Since many of the CALFED actions are multi-purpose, should the new entity be limited to ERP implementation or should its scope include other aspects of the program such as water quality or levee projects?

Cynthia Koelher summarized the EWC views. The environmental groups generally agree with the idea of a new entity to implement ERP and to be responsible for achieving the program performance standards. They also agree that the new entity should not be a regulator and that funding should be consolidated, including CVPIA money. They also agree that the new entity should manage the monitoring program and make the adaptive management decisions.

The major area of disagreement with the Ag-Urban paper is the idea that the new entity should be the insurer of water users with respect to new regulatory constraints. The environmental representatives generally do not accept the premise that if the new entity has a large amount of money, the water users should get long-term "no surprises" protection.

Tom Hagler pointed out that the agency managers still have reservations about the idea of new entity and that stakeholders may need to make the case for this idea to the agencies if they wish to see this move forward.

Lester suggested that the way to resolve these issues is to push forward with a "straw" proposal for ERP management and implementation. The proposal should provide specific details on the entity's functions, its funding and the concept of shared risks. The proposal should describe what level of "no surprises" could be provided to water users.

9. Dave Fullerton provided an overview of the latest memo on the Contingency Response Process. There was a brief discussion of some of the major issues regarding the implementation of a contingency response process. For example, who will make the decision that the process should be triggered or invoked? What criteria will be developed and by whom regarding such a determination? What safeguards can we develop that the contingency response process will not be used inappropriately to "re-balance" the Program

to the advantage or disadvantage of a particular interest group? All of these issues have major implication for assurances.

10. The next Assurances Work Group meeting is scheduled for September 3, 1998, from 9:00 a.m. until noon.

The meeting was adjourned at 4:30 p.m.